

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DENNIS JAMES GALLAGHER,

Plaintiff,

v.

MISSOURI DEPARTMENT
OF CORRECTIONS,

Defendant.

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No. 4:21-cv-01004-SRW

MEMORANDUM AND ORDER

This matter is before the Court on the motion of plaintiff Dennis James Gallagher to withdraw his complaint. (Docket No. 11). The Court construes plaintiff's motion as a notice of dismissal pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, and will allow plaintiff to dismiss his case without prejudice. *See* Fed. R. Civ. P. 41(a)(i) (stating that the plaintiff may dismiss an action by filing "a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment"). The dismissal will not count as a "strike" under 28 U.S.C. § 1915(g). Plaintiff's pending motion to appoint counsel (Docket No. 2), motion for leave to proceed in forma pauperis (Docket No. 3), and second motion to appoint counsel (Docket No. 9) will be denied as moot.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to withdraw his complaint (Docket No. 11) is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff's motions to appoint counsel (Docket No. 2; Docket No. 9) and for leave to proceed in forma pauperis (Docket No. 3) are **DENIED AS MOOT**.

IT IS FURTHER ORDERED that this action is **DISMISSED** without prejudice. A separate order of dismissal will be entered herewith.

IT IS FURTHER ORDERED that this dismissal without prejudice will not constitute a “strike” under 28 U.S.C. § 1915(g).

IT IS FURTHER ORDERED that an appeal from this dismissal would not be taken in good faith.

Dated this 14th day of December, 2021.

A handwritten signature in cursive script that reads "Ronnie L. White". The signature is written in black ink and is positioned above a horizontal line.

RONNIE L. WHITE
UNITED STATES DISTRICT JUDGE